

Remarks

Applicants have amended claims to expedite prosecution of a preferred embodiments. Accordingly, Applicants do not abandon or disclaim any subject matter cancelled by the present Amendment. Thus, the Applicants reserve the right to pursue cancelled claims and subject matter in any continuation, divisional and/or continuation-in-part applications that may claim priority to the present application.

Specifically, Applicants have cancelled the previously withdrawn claims 2-4, 11, 15 and 16 as directed to non-elected inventions. Applicants have further amended claims 13 and 14 to delete terms referring to brand names of compounds. Accordingly, the amendments are clerical and do not introduce new matter and their entry is respectfully requested.

The Examiner objected to claims 13 and 14 because the claims contained trademarks. In view of the amendments to the claims, Applicants respectfully submit that the objection has been obviated.

The Examiner rejected claims 13-14 as allegedly not complying with 35 U.S.C. §112, second paragraph definiteness requirement. Specifically, the Examiner rejected the claims because of the use of trademarks in the claims.

In view of the amendments to the claims, Applicants respectfully submit that the objection has been obviated.

The Examiner also rejected claims 1, 5, 7, 8, 10, 13 and 17 as allegedly anticipated under 35 U.S.C. §102(e) by U.S. Patent No. 6,908,907 to El-Naggar et al. ('907). Specifically, the Examiner alleged that El-Naggar discloses the use of an anti-platelet agent and anticoagulant in combination with radiation therapy for treatment of cancer associated with cancer.

Applicants respectfully submit that the rejection be withdrawn for the following reasons.

The '907 patent was filed on April 22, 2002. The present application claims the benefit of provisional application No. 60/433,471, filed on December 13, 2002. Applicants submit herewith

a Declaration under 37 C.F.R. 1.131 by the inventors Dicker, Burd and Sidhu ("Declaration") showing that the Applicants were in possession of the invention prior to April 22, 2002.

Prior to April 22, 2002, the Applicants filed a grant proposal describing the idea of using antiplatelet therapy in combination with radiation therapy in treating solid tumors as well as the particular advantages such a therapy would result in (par. 5 of Declaration)

Even if the Examiner were for some reason to dispute the breadth of what Applicants described, the grant application certainly shows that they described at as much as is described in '907. All '907 describes is that one can use the method as described, in combination with any other cancer treatment method, listing chemotherapy, radiation therapy, angiogenesis inhibitors etc. as possible other methods to combine the therapy with. This is indeed, less than the Applicants' description, which specifically describes the advantages of using antiplatelet therapy in combination with radiation therapy. It is sufficient for Applicant to show only as much as the reference discloses prior to the date of the reference. In *re Stemple*, 44 CCPA 820, 241 F.2d 755, 113 USPQ 77 (1957). Applicants' grant application describing the use of antiplatelet therapy in combination with radiation therapy shows at least as much as is described in '907.

In view of the above, Applicants respectfully submit that the rejection of claims 1, 5, 7, 8, 10, 13 and 17 as allegedly anticipated under 35 U.S.C. §102(e) by '907 should be withdrawn.

The Examiner rejected claim 9 under 35 U.S.C. §103(a) as allegedly obvious over '907.

Applicants respectfully submit, that in view of the Declaration and as described, *supra*, '907 cannot be used as prior art. Therefore, the rejection of claim 9 under 35 U.S.C. §103(a) should be withdrawn.

The Examiner rejected claim 14 under 35 U.S.C. §103(a) as allegedly obvious over '907 in view of U.S. Patent No. 6,136,804 to Nichtberger.

Applicants respectfully submit, that in view of the Declaration and as described, *supra*, '907 cannot be used as prior art. Nichtberger alone does not describe using antiplatelet agents in combination with radiation therapy. Therefore, the rejection of claim 14 under 35 U.S.C. §103(a)

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should be withdrawn.

The Examiner rejected claims 12 and 18 under 35 U.S.C. §103(a) as allegedly obvious over '907 in view of U.S. Patent No. 6,887,474 to Stewart et al.

Applicants respectfully submit, that in view of the Declaration and as described, *supra*, '907 cannot be used as prior art. Stewart alone does not describe using antiplatelet agents in combination with radiation therapy. Therefore, the rejection of claims 12 and 18 under 35 U.S.C. §103(a) should be withdrawn.

In light of the above, Applicants respectfully submit that the claims are now in condition for allowance. At minimum, the amendments to the claims will reduce the issues on Appeal. Early and favorable consideration is respectfully solicited.

The Commissioner is hereby authorized to charge any fees or credit any overpayments that may be due in connection with this submission to Nixon Peabody LLP Deposit Account No. 50-0850.

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Respectfully submitted,

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